NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No. 802 of 2017

1. Sandeep Tiwari S/o Shri G. P. Tiwari, Aged About 42 Years
2. Sanjana Tiwari, W/o Shri Sandeep Tiwari, Aged About 38 Years, Both are R/o Anant Vihar Colony, Daldalsivani, Raipur (Chhattisgarh).

---- Petitioners

Versus

1. Collector Cum District Magistrate Raipur, District Raipur (Chhattisgarh)
2. Chhattisgarh Rajya Sahkari Bank, Indira Gandhi Vyavasaiyk Parisar, Pandri, Raipur (Chhattisgarh) Through Its Authorized Officer.

---- Respondents

For Petitioners	:	Shri Pallav Mishra, Advocate
For State	:	Shri Chandresh Shrivastava, Panel Lawyer

Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

07/04/2017

1. Heard on admission.
2. The petition is directed against the order dated 01/12/2016 passed by the District Magistrate, Raipur in the matter of delivery of possession of the secured assets under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, *'SARFAESI Act'*).
3. Learned counsel for the petitioner submits that the petitioner-borrower has all the good intention of paying the loan amount but due to financial stress, the entire amount could not be paid by him. It is next submitted that in the proceeding under Section 14 of the SARFAESI Act by the District Magistrate, the petitioner was not afforded any opportunity of hearing. It is further submitted that in view of the provision contained in Rule 8 of the Security Interest (Enforcement) Rules, 2002 (for short, *'the Rules, 2002'*) the possession is required to be taken only in the manner prescribed under the law by affixing the

possession notice as also service of notice of possession in the prescribed manner.

4. In so far as challenge to order on the ground of opportunity of hearing is concerned, the order is self-evident. It is clearly stated in the order that the petitioner was duly represented by a counsel before the District Magistrate. Number of opportunities were granted, the matter was heard and then four days time was also granted to submit written argument.

5. In the considered opinion of this Court, the petitioner, on facts, is found to have been afforded due and proper opportunity of hearing. The petitioner could not dispute his loan liability for the amount which is alleged to be payable by the petitioner towards discharge of his loan liability. Even according to the petitioner, because of his own financial stress, he could not repay the loan with all good intention.

   Reliance has been placed on the provisions contained under Rule 8 of the Rules, 2002 is misplaced. The validity of order under Section 14 cannot be judged with reference to requirement of Rule 8. The District Magistrate before passing order under Section 14 of the SARFAESI Act is not required to proceed as required under Rule 8 of the Rules, 2002 this provision requires the authorized officer to follow certain procedure in the matter of taking possession. Therefore, the said provision cannot be pressed into service to assail the correctness and validity of the order passed by the District Magistrate. Learned counsel for the petitioner also placed reliance on the decision of the Supreme Court in the matter of ***Harshad Govardhan Sondagar v. International Assets Reconstruction Co. Ltd., (2014) 6 SCC 1***. The reliance on the decisioin is also misconceived in law, because the petitioner does not claim to be lessee of borrower but he himself is the borrower.

6. Therefore, there is no ground is made out to interfere with the order of the District Magistrate.

7. In the last, learned counsel for the petitioner submits that the petitioner is ready and willing to discharge his liability to save the property.

8. This aspect can be looked into only by the Bank from whom, loan has been taken by the petitioner. The petitioner may approach the Bank

with offer for repayment of the amount to avoid delivery of possession pursuant to the order of the District Magistrate.

9. Subject to the aforesaid observation, the petition is dismissed.

Sd/-
(Manindra Mohan Shrivastava)
Judge

Kamde